

**Notice of Allowability**

**Application No.**

09/921,013

**Examiner**

Vera Afremova

**Applicant(s)**

YANG ET AL.

**Art Unit**

1651

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 5/30/2003 and 11/25/2003.
2. ☒ The allowed claim(s) is/are 1-11.
3. ☒ The drawings filed on 30 May 2003 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)          |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 6 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____.            |
| 3 <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. _____  | 7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment                  |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
|  | 9 <input type="checkbox"/> Other _____.   |

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### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Paul C. Steinhardt on 12/08/2003.

#### IN THE CLAIMS:

Claim 2, line 2, after phrase "providing" has been inserted ---cells of---.

Claim 2, line 6, phrase "biologically pure culture" has been replaced by ---cells--.

Claim 2, line 6, before phrase "medium" has been inserted ---culture---.

Claim 2, line 7, article "an" has been replaced by article ---the---.

Claim 3, line 3, phrase "microorganism" has been replaced by ---cells---.

Claim 5, line 2, phrase "ranged" has been replaced by ---in a range---.

Claim 6, line 1, number 1 has been replaced by number ---2---.

Claim 6, line 2, phrase "ranged" has been replaced by ---in a range---.

Claim 7, line 2, phrase "ranged" has been replaced by ---in a range---.

Claim 8, line 2, phrase "culture" has been deleted.

Claim 9, line 3, phrase "culture" has been deleted.

Claim 9, line 3, at the end of line 3 symbol ":" has been replaced by ---;---.

Claim 11, line 1, phrase "obtainable" has been replaced by ---comprising the exopolysaccharide obtained---.

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**IN THE ABSTRACT:**

Page, 24, line 5, after phrase “a novel *Enterobacter* sp.” has been inserted ---strain SSYL deposited under accession number KCTC 0687BP---.

The following is an examiner’s statement of reasons for allowance:

Applicants’ arguments and Declarations filed on 5/30/2003 and on 11/25/2003 have been fully considered and found persuasive that the presently claimed strain “KCTC 0687BP” is a novel strain because it is different from the prior art representatives of *Enterobacter* sp. including representatives of the *Enterobacter cloacae* and *Enterobacter sakazakii* as demonstrated by metabolic pathway diagnostics and taxonomical studies presented by applicants in the Appendix A-F attached to the Declaration filed on 5/30/2003. In addition, the applicants’ novel strain is capable to produce an exopolysaccharide comprising various sugars that is neither taught nor suggested by the prior art of record. Thus, the presently claimed invention is novel and unobvious over the art of record.

The deposit requirement for the strain KCTC 0687BP has been met in the papers filed on 7/21/2001. The presently claimed *Enterobacter* sp. strain KCTC 0687BP is also identified by other informal internal laboratory designations such as “SSYL” and/or “BSID-807-1”.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Afremova whose telephone number is (703) 308-9351 till January 15, 2004 or (571) 271-0914 after January 15, 2004. The examiner can normally be reached on 9.30 am - 6.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on (703) 308-4743 till January 15, 2004 or on (571) 272-0926 after January 15, 2004.

The fax phone number for the TC 1600 where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Vera Afremova



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VERA AFREMOVA

December 9, 2003.

PATENT EXAMINER